Supreme Court, U. S.
FILED
JUN 26 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-1603

CATHERINE A. DAUGHERTY,

Petitioner,

vs.

CITY OF LONG BEACH, CALIF., a municipal corporation, and STATE OF CALIFORNIA,

Respondents.

SUPPLEMENT TO PETITIONER'S REPLY BRIEF

JERROLD A. FADEM
MICHAEL M. BERGER
of FADEM, BERGER & NORTON
A Professional Corporation

501 Santa Monica Boulevard
Suite 600
P. O. Box 2148
Santa Monica, CA 90406
(213) 451-9951

Attorneys for Petitioner

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1977
No. 77-1603

CATHERINE A. DAUGHERTY,
Petitioner,

vs.

CITY OF LONG BEACH, CALIF.,
a municipal corporation, and
STATE OF CALIFORNIA,
Respondents.

SUPPLEMENT TO PETITIONER'S REPLY BRIEF

JERROLD A. FADEM
MICHAEL M. BERGER
of FADEM, BERGER & NORTON
A Professional Corporation

501 Santa Monica Boulevard
Suite 600
P. O. Box 2148
Santa Monica, CA 90406
(213) 451-9951

Attorneys for Petitioner

TABLE OF AUTHORITIES

Case	Page
Robinson v. Ariyoshi (D. Haw. 1977) 441 F.Supp. 559	1-4

Rule	
Supreme Court Rules	
Rule 24[5]	1

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-1603

CATHERINE A. DAUGHERTY,

Petitioner,

vs.

CITY OF LONG BEACH, CALIF.,
a municipal corporation, and
STATE OF CALIFORNIA,

Respondents.

SUPPLEMENT TO PETITIONER'S REPLY BRIEF

The Petitioner, Catherine Daugherty, files this brief pursuant to Rule 24[5], Supreme Court Rules, to bring to the Court's attention a decision not available at the filing of her last brief.

The case is Robinson v. Ariyoshi (D.Haw. 1977) 441 F.Supp. 559.

Robinson involves water rights. Under settled state law, the Robinsons had vested rights to "surplus waters".

These rights were supported by ". . . decision after decision . . ." of the Hawaii Supreme Court (441 F.Supp. at 583).[1]

Then, suddenly, the Hawaii Supreme Court reversed its course. The formerly private water rights were declared to belong to the State:

> "McBryde I therefore came as a shocking, violent deviation from the solidly established case law - totally unexpected and impossible to have been anticipated. It was a radical departure from prior decisions." [2]

The U.S. District Court refused to permit such a transformation of private rights into public rights without compensation:

1/ Just as the rights at bench were supported by decision after decision of the California Supreme Court (Pet. at 20-21).

2/ For similar comments about the California rule at bench, see Pet. at 16-18, Petitioner's Reply at 2-6.

> "It is axiomatic that the law of real property is left to the states to develop and administer. Hawaii, like every other state, may by its legislature or its courts make changes in its real property laws, including laws governing property rights of riparian land owners in and to the use of waters flowing along their lands. Underlying the right of the courts and legislature to make changes in the law, however, is the concomitant obligation of the State to compensate those whose property may have been taken over by the State by those changes. Chicago, Burlington &c. R'D v. Chicago, 166 U.S. 226, 17 S.Ct. 581, 41 L. Ed. 979 (1897). Even by legislative fiat, property cannot be expropriated and taken over by the State without compensating the private owner for his lost rights. No more can private property be so taken away by judicial decision and handed over, gratis, to the State. 'The touchstone of due process is the protection of the individual against arbitrary action of the government.' Wolff v. McDonnell, 418 U.S. 539, 558, 94 S.Ct. 2963, 2976, 41 L.Ed.2d 935."
>
> (441 F.Supp. at 584-585)

Regardless of the public-spirited motivation of the Hawaii Supreme Court to secure these water rights for "the

people", the District Court held that such a public-to-private transformation cannot be effectuated without compensation:

> "This retroactive taking of private property for and by the State, without payment therefore, was clearly the result of 'perverse reading of prior law' as inferentially condemned in O'Neil v. Northern Colorado Irrigation Co., 242 U.S. 20, 26, 37 S.Ct. 7, 61 L.Ed. 123 (1916), and in contravention of the principles laid down in Muhlker v. New York & Harlem R.R., 197 U.S. 544, 25 S. Ct. 522, 49 L.Ed. 872 (1905). Even though the court may have been motivated to act because the justices thought it was for the best interest of Hawaii that suplus water be publicly owned and that the rivers should flow, undiminished, to the sea, the court could not and cannot take away the private property of the plaintiffs without paying them for it. The Fourteenth Amendment so commands."
>
> (441 F.Supp. at 586)

That this Fourteenth Amendment protection is for the people of all the states, is what Mrs. Daugherty needs this Court to say.

Mrs. Daugherty prays that a writ issue.

Respectfully submitted,

JERROLD A. FADEM
MICHAEL M. BERGER
FADEM, BERGER & NORTON
A Professional Corporation

Attorneys for Petitioner